
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of
Telecommunications Services
Inside Wiring
Customer Premises Equipment

CS Docket No. 95-184

In the matter of
Implementation of the Cable
Television Consumer Protection
and Competition Act of 1992
Cable Home Wiring

MM Docket No. 92-260

**PETITION OF AMERITECH
FOR PARTIAL RECONSIDERATION**

Ameritech New Media, Inc. (hereinafter "Ameritech")¹ welcomes the new rules recently adopted by the Commission in its Report and Order in the above-referenced proceedings² (hereinafter "Order") pertaining to cable inside wiring installed in multiple dwelling unit

¹ Ameritech New Media, Inc., is a subsidiary of Ameritech Corporation. It began providing competitive MVPD service to customers in May 1996 and currently has franchises in 62 communities in the Chicago, Detroit, Cleveland, and Columbus area markets.

² FCC 97-376, released Oct. 17, 1997.

(“MDU”) buildings by multichannel video programming distributors (“MVPDs”).

In particular, Ameritech is pleased to see that under the new rules as they have been adopted, whenever an incumbent MVPD claims that it need not comply with the Commission’s cable inside wire rules because of its pre-existing contractual rights, it will be required to either seek vindication of those rights before a state court or relinquish them. Ameritech (among others) advocated the adoption of such a requirement, which was not in the rules as originally proposed last August.

However, Ameritech submits that there is still room for improvement in the unit-by-unit MDU disposition rules.³ In particular, when an incumbent MVPD first learns that a given building will be subject to unit-by-unit competition, the rule as adopted still allows the incumbent MVPD too much time — a full thirty days — to decide whether it will remove, abandon, or sell the inside wire that serves the end users who elect to switch to the alternate MVPD. In addition, after the incumbent MVPD has made that decision, and as individual end users begin to choose the service of the alternate MVPD, the new rule is unclear as to how and when the alternate MVPD is allowed to take

³ As stated in Ameritech’s earlier Comments and Reply Comments dated September 25 and October 6, 1997, the primary marketplace focus of Ameritech New Media is on unit-by-unit competition, although the changes in the rules for building-by-building competition are also welcome.

over any facilities sold or abandoned by the incumbent MVPD. The steps necessary to correct these shortcomings on reconsideration, through either amendment or clarification of Section 76.804 of the Commission's rules, are detailed below.

I. The Unit-by-Unit Notification and Incumbent Election Process Is Too Slow To Permit Vigorous Competition.

The Commission's new rule (Section 76.804(b)(1))⁴ for the unit-by-unit disposition of home run wiring requires, as originally proposed, that an MVPD that receives a sixty-day notice⁵ from the MDU owner must, within thirty days, make a single election, applicable to the entire building, whether it will remove, abandon, or sell

⁴ The relevant part of the rule as adopted states:

Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: (i) remove the wiring and restore the MDU building consistent with state law; (ii) abandon the wiring without disabling it; or (iii) sell the wiring to the MDU owner.

⁵ The rule states that after this "60 days' written notice," the incumbent will "then" have 30 days to make its decision. Ameritech understands this to mean that the 30 days begins to run at the *beginning* of the 60 days, rather than at the end, to allow for the possibility that the incumbent might elect to abandon or to negotiate the price of the wire in case of a sale.

its home run inside wire. If it elects to sell, an additional thirty days is allowed for the negotiation of the price, and in the absence of agreement, even more time is allotted for arbitration of the price.

Ameritech submits that the time frame allowed for this process of notice, negotiation, and arbitration is entirely too generous and will discourage vigorous unit-by-unit competition. Indeed, as Ameritech pointed out in its opening Comments, under the Commission's single-dwelling-unit rules that have long been in effect, if the occupant of a single-family home calls to cancel his or her cable service, the incumbent must make its election while the caller is still on the line. But under the new rule, just because the caller happens to live in a two-unit MDU, the incumbent provider can claim a whole month for equivocation over selling, abandoning, or removing its wire, as well as another month or more for price negotiation and arbitration. There is nothing to justify such a wide difference in the treatment of these two similar situations.

Furthermore, the incumbent will not use this extended time period simply to consider its election under the rules. Instead, the rule will serve mainly to allow the incumbent an impossibly generous time to develop its competitive counterattack in response to the arrival of an alternative provider. Rather than deciding at leisure whether to sell, abandon, or remove, the incumbent cable provider will doubtless make the most of its surfeit of time by plotting how to win back the

customers. Meanwhile, the alternate provider's sales force will literally be stalled at the end user's door, unable to schedule individual installations until it knows what choice the incumbent has finally settled upon.

Although several commenters objected to the excessive length of the incumbent's decision period, almost no one claimed the period was too short, and there were but few defenders of the original thirty-day proposal. However, in adopting the new rule, the Order suggests that one reason such a long time might be needed is that the incumbent will now have to consider the additional issue of whether to file suit in a state court to vindicate its rights.⁶ As already noted, Ameritech strongly supports the new requirement on the incumbent to file suit or relinquish contractual rights, but that additional possibility is not sufficient to justify retaining the thirty-day unit-by-unit decision period. For one thing, the prospect of filing suit will not always be present, since it will often be the case that the issue has already been litigated concerning a particular contract repeatedly used by the same

⁶ Thus in ¶ 77 of the Order the Commission says: "After consideration of the comments, we adopt a presumption that the building-by-building and unit-by-unit procedural mechanisms will apply unless and until the incumbent obtains a court ruling or an injunction enjoining its displacement during the 45-day period following the initial notice. The incumbent will still be required to make its election to sell, remove or abandon the wiring by the end of the initial 30-day period in the absence of such a ruling or injunction. In light of this rule, we decline to adopt the suggestions of various commenters that we shorten the initial election period."

incumbent. Moreover, the incumbent can easily determine in advance, long before any competitor actually appears, which of its MDU buildings are likely to have sustainable contracts. In short, the thirty-day election period for unit-by-unit competition in MDU buildings is too long, and should be reconsidered by the Commission. Ameritech submits that a period of not more than seven days would be appropriate.

II. The Rules for Accessing Individual Subscriber Units Should Ensure That Service Transitions Are Transparent to the Customer.

After the incumbent provider has been notified that the MDU building will be subject to unit-by-unit competition, and after the incumbent's thirty-day election period has elapsed (*i.e.*, after the incumbent has made known its choice, applicable to the entire building, whether it will sell, abandon, or remove its home run inside wiring), the actual unit-by-unit transition of each subscriber's service will be governed by new Section 76.804(b)(3) of the Commission's Rules. In cases where the incumbent has elected to sell or abandon its home run inside wire, that section provides, in pertinent part:

When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, [here are inserted the rules for providers electing removal, including a seven-day rule]. If the provider has elected to abandon or sell the wiring . . . , the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. . . . The incumbent provider shall make the home run

wiring accessible to the alternative provider within twenty-four (24) hours of actual service termination.

Ameritech respectfully submits that this section is overly complicated and does not state with clarity the rights and responsibilities of the incumbent and alternative providers at this stage of the process. Nor does the rule ensure that the process of transferring service from an incumbent to an alternative provider is transparent to the end user customer. Accordingly the rule should be revised on reconsideration.

One source of ambiguity in the rule is the way the preposition "of" is used in the phrase "within twenty-four (24) hours *of* actual service termination." This could be read to say either within 24 hours *before* termination or within 24 hours *after* termination. Although the context, of course, clearly indicates that the inside home run wire should be made available to the new provider *before* the incumbent's service is terminated, in order that the end user selecting the competitive alternative is not penalized by a service interruption, the rule should be amended so that its meaning can be gathered directly from its actual language without the need to refer to the Report and Order to determine the context.

Moreover, even if the rule is correctly interpreted to mean that access must be granted to the alternate MVPD within 24 hours *before* termination, the effect of the rule still will be to stifle incipient cable competition by requiring (or so it appears) every individual end user to give the incumbent cable operator at least 24 hours' prior notice before

changing MVPDs. There is no need to indulge in such outright protectionism for the incumbent; certainly, no such anticompetitive waiting period is required in single-family dwellings.

Moreover, as a practical matter, in a typical MDU installation, the transition from one cable service to another in an MDU building using the incumbent's wire requires the personnel of the incumbent and the alternate provider to be on the premises *simultaneously* to transition the use of the wire for each individual subscriber. Thus the 24-hour rule as it is written will unduly burden both the incumbents and the alternate providers by requiring them to meet an unending series of 24-hour deadlines and make repeated trips to the premises to coordinate the access to and transfer of the wire for each individual end user as he or she elects to change service providers. In addition, it will be nearly impossible for the changeover from one provider to another to be coordinated so as to ensure that the customer will not be without service for some period of time.

To avoid these complexities, the Commission should revise this rule to simply require incumbent MVPDs⁷ to make the home run wire of *every* end user potentially accessible to the alternate provider *at the same time* the incumbent announces its decision to sell or abandon its

⁷ Of course, alternate MVPDs would have to follow a similar rule.

home run wire.⁸ Incumbents could readily comply with such a condition by (for example) terminating the upstream end of each end user's home run wire in a new lockbox (or bridger box) to which both the incumbent and alternate providers had equivalent, immediate access. This would permit the alternative provider to install new service without the need to coordinate premises visits with the incumbent. Any costs imposed on the incumbent providers by a rule requiring such an intermediate bridger box would be offset by the operational savings from reducing the required number of visits to the MDU premises by the incumbent's personnel. Moreover, this change would permit alternate providers to meet their service commitments by installing their service as promptly and reliably in *multiple* unit dwellings as they have been doing in *single-family* dwellings, thus bringing the full benefits of cable competition to the many millions of MDU occupants throughout the country in as transparent a manner as possible.

III. Conclusion.

For the above and foregoing reasons, Ameritech New Media submits that Section 76.804 of the Commission's new rules should be amended or clarified on reconsideration consistent with this Petition to shorten the incumbent's election period for unit-by-unit competition

⁸ The rule advocated here would obviously not apply in the case of removal.

to seven days, and also to require the incumbent to make the home run wire of every end user potentially accessible to the alternate provider simultaneous with the incumbent's initial unit-by-unit decision.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of Petition of Ameritech for Partial Reconsideration has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 15th day of December, 1997.

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